

AMENDED IN ASSEMBLY APRIL 2, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 68**

**Introduced by Assembly Member Simitian**

December 11, 2002

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~~An act relating to the Internet. An act to add Chapter 22 (commencing with Section 22575) to Division 8 of the Business and Professions Code, relating to privacy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 68, as amended, Simitian. ~~Internet: privacy~~ Online Privacy Protection Act of 2003.

*Existing law does not regulate the security and confidentiality of consumer personal and identifying information obtained by persons and entities engaged in online business transactions.*

*This bill would require an operator, defined as a person or entity that collects personally identifiable information from California residents through an Internet Web site or online service for commercial purposes, to conspicuously post a privacy policy on its Web site and to comply with that policy. The bill would require that the privacy policy identify the categories of information that the operator collects about individuals and with whom the operator may share the information. The bill would preempt and supersede laws of specified local government entities regarding the posting of a privacy policy on an Internet Web site, other than laws related to financial institutions.*

~~Existing law requires a state agency that collects personal information on the Internet to notify the user, among other matters, of~~

~~the type of information collected and the purpose for which it will be used.~~

~~This bill would express the findings of the Legislature that every commercial Web site operator doing business in California has an obligation to maintain the privacy of the state's residents. The bill would also declare the intent of the Legislature to require an operator who collects personally identifiable information to notify California residents of its online privacy policies.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. — This act shall be known and may be cited as, the~~  
2 *SECTION 1. This act shall be known as, and may be cited as,*  
3 *the Online Privacy Protection Act of 2003.*

4 *SEC. 2. The Legislature finds and declares all of the*  
5 *following:*

6 *(a) Each operator of a commercial Web site has a continuing*  
7 *and affirmative obligation to respect and uphold the privacy of*  
8 *individual users of, or visitors to, the commercial Web site or*  
9 *online service who are located in California, and to protect the*  
10 *security and confidentiality of these individuals' personally*  
11 *identifiable information.*

12 *(b) It is the intent of the Legislature to require each operator of*  
13 *a commercial Web site to provide individual users of, or visitors to,*  
14 *the commercial Web site or online service who are located in*  
15 *California with notice of its privacy policies, thus improving the*  
16 *knowledge these individuals have as to whether personally*  
17 *identifiable information obtained by the commercial Web site*  
18 *through the Internet may be disclosed, sold, or shared.*

19 *(c) It is the intent of the Legislature that Internet service*  
20 *providers or similar entities responsible for transmitting data shall*  
21 *have no obligations under this act related to personally*  
22 *identifiable information that they do not collect, maintain, or*  
23 *store.*

24 *SEC. 3. Chapter 22 (commencing with Section 22575) is*  
25 *added to Division 8 of the Business and Professions Code, to read:*  
26

CHAPTER 22. *INTERNET PRIVACY REQUIREMENTS*

22575. (a) An operator of a commercial Web site that collects personally identifiable information through the Internet about individual users of, or visitors to, its commercial Web site or online service who are located in California shall conspicuously post its privacy policy on the Web site. The privacy policy shall identify the categories of information that the operator collects through the Internet about individual users of, and visitors to, its commercial Web site or online service and the categories of persons or entities with whom the operator may share the information.

(b) The privacy policy shall also do all of the following:

(1) Disclose whether or not the operator maintains a process for an individual user of, or visitor to, its commercial Web site or online service to review and request changes to his or her personally identifiable information that is collected through the Internet, and if so, include a description of that process.

(2) If the operator reserves the right to change its privacy policy without notice to the individual user of, or visitor to, its commercial Web site or online service, the privacy policy shall make a statement to that effect.

(3) Identify its effective date.

22576. An operator of a commercial Web site shall post or provide, upon request, to an individual user of, or visitor to, its commercial Web site or online service, the privacy policy that was in effect at the time the user or visitor first disclosed his or her personally identifiable information or initially signed up for the operator's service. This chapter, however, shall not create a duty on the part of the operator to reconstruct and post past privacy policies that were in existence prior to the operative date of this chapter, or to provide privacy policies that have not been in effect for more than five years.

22577. For the purposes of this chapter, the following definitions apply:

(a) The term "personally identifiable information" means individually identifiable information about an individual collected online, including any of the following:

(1) A first and last name.

(2) A home or other physical address, including street name and name of a city or town.

1 (3) *An e-mail address.*

2 (4) *A telephone number.*

3 (5) *A social security number.*

4 (6) *Any other identifier that permits the physical or online*  
5 *contacting of a specific individual.*

6 (7) *Information concerning a user that the Web site collects*  
7 *online from the user and combines with an identifier described in*  
8 *this subdivision.*

9 (b) *The term “conspicuously post” with respect to a privacy*  
10 *policy shall include posting the privacy policy through any of the*  
11 *following:*

12 (1) *A Web page on which the actual privacy policy is posted if*  
13 *the Web page is the homepage or first significant page after*  
14 *entering the Web site.*

15 (2) *An icon that hyperlinks to a Web site on which the actual*  
16 *privacy policy is posted, if the icon is located on the home page or*  
17 *the first significant page after entering the Web site, and if the icon*  
18 *contains the word “privacy.” The icon shall also use a color that*  
19 *contrasts with the background color of the Web page.*

20 (3) *A text link that hyperlinks to a Web page on which the actual*  
21 *privacy policy is posted, if the text link is located on the home page*  
22 *or first significant page after entering the Web site, and if the text*  
23 *link does one of the following:*

24 (A) *Includes the word “privacy” in a type size no smaller than*  
25 *the type size of the majority of the remainder of the page, and is*  
26 *located either at the bottom of the page or in the left-most column.*

27 (B) *Is written in capital letters equal to or greater in size than*  
28 *the surrounding text, or in contrasting type, font, or color to the*  
29 *surrounding text of the same or lesser size.*

30 (C) *Is written in larger type than the surrounding text, or in*  
31 *contrasting type, font, or color to the surrounding text of the same*  
32 *size, or set off from the surrounding text of the same size by symbols*  
33 *or other marks that call attention to the language.*

34 (4) *Any other functional hyperlink that is so displayed that a*  
35 *reasonable person would notice it.*

36 (c) *The term “operator” means any person or entity that*  
37 *operates a Web site located on the Internet or that operates an*  
38 *online service that collects or maintains personally identifiable*  
39 *information from or about a California resident who uses or visits*  
40 *the Web site or online service if the Web site or online service is*



1 operated for commercial purposes, including any person or entity  
2 offering a product or service for sale through that Web site or  
3 online service.

4 22578. (a) An operator who fails or refuses to conspicuously  
5 post a privacy policy on its Web site within 60 days after being  
6 notified of its failure to comply with that requirement, shall be in  
7 violation of Section 22575.

8 (b) An operator who either knowingly and willfully or  
9 negligently fails to comply with the provisions of its privacy policy  
10 shall be in violation of Section 22575.

11 22579. It is the intent of the Legislature that this chapter is a  
12 matter of statewide concern. This chapter supersedes and  
13 preempts all rules, regulations, codes, ordinances, and other laws  
14 adopted by a city, county, city and county, municipality, or local  
15 agency regarding the posting of a privacy policy on an Internet  
16 Web site. This chapter does not, however, supersede or preempt  
17 rules, regulations, codes, ordinances, or laws adopted by any of  
18 those agencies related to financial institutions.

19 ~~Online Privacy and Policy Disclosure Act of 2003.~~

20 ~~SEC. 2.—The Legislature finds and declares the following:~~

21 ~~(a) Every operator of a commercial Web site doing business in~~  
22 ~~California has a continuing and affirmative obligation to respect~~  
23 ~~and maintain the privacy of California residents and to protect the~~  
24 ~~security and confidentiality of the personally identifiable~~  
25 ~~information of each California resident.~~

26 ~~(b) It is the intent of the Legislature to require an operator of a~~  
27 ~~commercial Web site that collects personally identifiable~~  
28 ~~information, to provide California residents with notice of its~~  
29 ~~online privacy policies, thus improving their awareness that~~  
30 ~~personally identifiable information collected through the Internet~~  
31 ~~may be disclosed, sold, or shared.~~

32 ~~(c) It is the intent of the Legislature that Internet service~~  
33 ~~providers or similar entities responsible for transmitting data shall~~  
34 ~~have no obligations under this act relative to disclosures related to~~  
35 ~~personally identifiable information that they do not collect,~~  
36 ~~maintain, or store.~~